

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

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2011 JUL 32 P 1:30

Patrick R. McIntosh,

) C/A 2:10-1730-RMG

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)  
) Plaintiff,

)  
)  
) vs.

) **ORDER**

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)  
) Charleston County Sheriff's Department,

)  
)  
) Defendant.  
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This matter is before the court in Plaintiff's *pro se* civil action. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(e), DSC, this matter was referred to United States Magistrate Judge Bristow Marchant for pre-trial proceedings and a Report and Recommendation. On July 8, 2011, the Magistrate Judge issued a Report and Recommendation recommending that this action be dismissed with prejudice if Plaintiff failed to respond or object to the Report and Recommendation. Plaintiff has failed to reply or object to the Report and Recommendation. As explained herein, this Court has reviewed the record for any errors of law and agrees with the Magistrate Judge's Report and adopts it as the Order of this Court.

**Discussion**

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28

U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate with instructions.” *Id.* In the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th Cir. 1983).

After reviewing the record of this matter for any errors of law, the applicable law, and the Report and Recommendation of the Magistrate Judge, the Court agrees with the conclusions of the Magistrate Judge. Here, Plaintiff has failed to cooperate in the discovery process of this lawsuit. Defendant has scheduled Plaintiff’s deposition on multiple occasions. Nevertheless, Plaintiff has failed to appear for any of the scheduled depositions. Moreover, Plaintiff has failed to correspond with Defendant for more than three months (since March 15, 2011) despite Defense counsel sending Plaintiff deposition notices and serving him with a motion to dismiss. Further, Plaintiff has failed to prosecute his case in accordance with the instructions set forth by the Magistrate Judge in scheduling and other orders, despite being specifically advised that his failure to comply with those orders and discovery would result in a recommendation of dismissal for failure to prosecute.


Despite Plaintiff’s failure to cooperate with the discovery process and court orders, the Magistrate Judge, in light of Plaintiff’s *pro se* status, presented the option of imposing a monetary penalty on Plaintiff as a less drastic option than an outright dismissal. Through the payment of fees and costs, Plaintiff could demonstrate to the Court his willingness to continue with the prosecution of this case and comply with Court rules as well as allow the Defendant to recover losses it has incurred as a result of Plaintiff’s conduct. However, Plaintiff has not replied or objected to the Magistrate Judge’s recommendation that this action be dismissed for failure to prosecute if Plaintiff failed to respond. (Dkt. No. 61). It appears that the Plaintiff no

longer wishes to pursue this action. As a result, this Court adopts the Magistrate Judge's Report and Recommendation as the order of this Court and incorporates it herein.

**Conclusion**

Accordingly, the Complaint is **DISMISSED** *with prejudice* for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir.1982).

**AND IT IS SO ORDERED.**

  
Richard Mark Gergel  
United States District Court Judge

August 1, 2011  
Charleston, South Carolina